

Docket No.: 03-0675
Bench Date: 03-23-05
Deadline: 03/31/05 (see below)

MEMORANDUM

TO: The Commission

FROM: Larry Jones, Administrative Law Judge

DATE: March 11, 2005

SUBJECT: William Shaw, as Trustee of Land Trust #8181 -vs- Illinois Power Company ("Illinois Power" or "IP")

Complaint as to Illinois Power's refusal to provide utility extensions until it receives a cash deposit.

RECOMMENDATION: Entry of the attached Order Denying Complaint.

Complainant is a developer of the Stonebridge residential subdivision at Edwardsville, Illinois. In August of 2001 the Complainant sought, from Illinois Power, the installation of underground gas and electric utilities along Limestone and North Hammington Streets in the Stonebridge subdivision. This extension of facilities was requested so that service would be available to potential end-users seeking service connections.

Various rules relating to the extension of electric lines and gas mains, and to the payment or deposit of the costs associated with the extension of such lines, or the agreement to pay or deposit such costs, are set forth in Sections 410.410(c)(1) and 500.310(c)(1) of Parts 410 and 500 of 83 Ill. Adm. Code, and in IP's tariffs.

At the request of Complainant, a letter was sent to Illinois Power by The Bank of Edwardsville ("Bank") on August 31, 2001. The letter stated in part that the Bank was "prepared to immediately issue an irrevocable letter of credit in [IP's] favor...on behalf of Mr. Shaw...for the electric and gas utilities to be installed for the Limestone and North Hammington Streets in the Stonebridge subdivision..." IP did not accept that offer of a letter of credit "in satisfaction of the deposit requirement."

In his Complaint, as twice amended, Complainant requests the Commission to "order Illinois Power to accept Mr. Shaw's Irrevocable Letter of Credit as satisfaction of the requirement to agree to provide a deposit; and order Illinois Power Company to build the requested utility extensions without delay."

The attached order contains a number of sections, including a Statement of Facts and Nature of Dispute (pp. 2-3); Cited Provisions of 83 Ill. Adm. Code and IP's Tariffs (pp. 3-4); Complainant's Position (pp. 4-5); IP's Position (5-10); Complainant's Reply (pp. 10-11); Exceptions and Replies (pp. 11-13); the order's Analysis and Conclusions (pp. 13-15) which also contains a brief recap of the facts and the parties' positions; and Findings and Ordering Paragraphs (pp. 15-16).

The order finds that the record does not support a finding that the letter of credit offered in the communication from the Bank was sufficient to satisfy applicable requirements in Commission rules and IP tariffs relating to deposits, or agreements for deposits, for the electric or gas line extensions in question. That is, of the two somewhat polarized and entrenched positions advanced by the respective parties, the order finds that IP's position is better supported by the record. Thus, the order would deny the Complaint for the reasons explained therein.

The order does not preclude further efforts on the part of the parties to find a middle ground on the issue, or the filing of further complaints if such efforts are unsuccessful. In that regard, it finds that the conclusion above is not intended to suggest that that use of an agreement, in which the party seeking an extension of facilities agrees to deposit the applicable costs, is inherently inconsistent with the deposit-related requirements of the Commission rules and IP tariffs, or that a letter of credit could never satisfy such requirements. The order also observes that some flexibility on the part of IP on this issue would not be inconsistent with Commission rules and IP's tariffs, and may help avoid further disputes over this issue in the future; and that if any such disputes do give rise to additional complaints in the future, the Commission will give them due consideration at that time.

With respect to the deadline in this case, in the event the one-year deadline were to be measured from the original complaint filing date, the parties have agreed to an extension of it until March 31, 2005 so that their scheduling preferences could be accommodated. However, as noted above, the complaint was twice amended. The Second Amendment filed July 9, 2004 materially modified the prayer for relief, which prompted a temporary objection to it. Hence, if the Commission would like more time to decide this matter, it would in my opinion be reasonable to view the deadline as July 9, 2005 since the version of the complaint actually before the Commission for consideration and decision is the one filed on July 9, 2004.

LMJ/lw